

AMENDED IN SENATE JUNE 18, 2002
AMENDED IN SENATE AUGUST 22, 2001
AMENDED IN SENATE AUGUST 20, 2001
AMENDED IN SENATE JULY 3, 2001
AMENDED IN SENATE JUNE 26, 2001
AMENDED IN ASSEMBLY MAY 16, 2001
AMENDED IN ASSEMBLY APRIL 30, 2001
AMENDED IN ASSEMBLY APRIL 18, 2001
AMENDED IN ASSEMBLY APRIL 5, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 1229

Introduced by Assembly Member Frommer

February 23, 2001

An act to add Section 330d to the Penal Code, relating to gambling.

LEGISLATIVE COUNSEL'S DIGEST

AB 1229, as amended, Frommer. Gambling: prohibited online gambling games.

(1) Existing law prohibits, with the exception of specified games conducted on Indian lands, banking or percentage games played with cards, dice, or devices, including roulette, faro, and twenty-one, lottery games, other than charitable bingo, raffles, and the games of the California State Lottery, the operation, possession, sale or control of

slot machines, as defined, and sports wagering and other forms of bookmaking and pool selling, other than licensed parimutuel wagering on horse races, and provides that any person who operates or bets at these prohibited gambling games is guilty of a crime and is punishable by a misdemeanor or felony, as specified.

This bill would state findings and declarations of the Legislature with regard to online gambling games, and would provide that it is unlawful for any person to operate ~~or bet against~~ any prohibited online gambling game, as defined, for money, checks, credit, or any other representative of value. This bill would provide that every person who operates or offers for play any prohibited online gambling game to any person physically located in this state at the time of the transaction, or who operates a prohibited online gambling game from a host server, as defined, that is physically located in this state at the time of the transaction, is guilty of a misdemeanor and is punishable by imprisonment in a county jail not to exceed 90 days, a fine not to exceed \$1,000 per transaction, as defined, or by both that fine and imprisonment. By creating a new crime, this bill would impose a state-mandated local program.

This bill would provide that every person or entity who aids and abets another person who is physically located in this state to ~~play or bet at~~ *deal, carry on, conduct, operate, offer for play, open, or cause to be opened* any prohibited online gambling game in violation of this section is guilty of a misdemeanor punishable by imprisonment in a county jail not to exceed 90 days, a fine not to exceed \$1,000 per violation, or by both that fine and imprisonment. This bill would provide that these provisions shall not apply with respect to advertisements that are not specifically directed towards this state and which contain adequate disclosure of the illegality of these games, nor to Internet service providers, web pages and search engines, or other indexes, networks, or network equipment which act as mere functional intermediaries between a patron and an online gambling enterprise and which do not reasonably constitute an advertisement or promotion of that enterprise.

~~This bill would provide that every person who plays or bets at or against a prohibited online gambling game while physically located within this state is guilty of an infraction punishable by a fine not to exceed \$25 per transaction. By creating a new crime, this bill would impose a state-mandated local program.~~



This bill would provide that its provisions are severable, and that if any of its provisions or its applications are held invalid, that invalidity shall not affect other provisions or applications that can be given effect.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. (a) The Legislature finds and declares the
2 following:

3 (1) Online gambling threatens the health, safety, and welfare of
4 the citizens of this state, because, unlike controlled gambling
5 conducted within licensed gambling establishments and tribal
6 casinos, online gambling is completely unregulated.

7 (2) The unregulated nature of online gambling enterprises,
8 combined with the fact that many online gambling providers are
9 located beyond the criminal jurisdiction of this state or of the
10 United States, poses an unacceptable risk of fraudulent business
11 practices to patrons of these establishments.

12 (3) Due to the anonymous nature of the Internet, online
13 gambling establishments are unable to accurately assess the age or
14 identity of online patrons, and thus these enterprises facilitate
15 illegal gambling by minors and other persons prohibited from
16 engaging in gambling.

17 (4) Online gambling enterprises routinely and incorrectly
18 assert that persons in this state can legally participate in online
19 gambling games, and thus these enterprises engage in false and
20 misleading advertising.

21 (5) Pursuant to the long-standing public policy of this state, as
22 interpreted by its courts, actions to recover losses and to enforce
23 debts from gambling generally are not available in California, and
24 judgments to recover losses or debts from gambling generally are
25 not enforceable in California.

(b) It is the intent of the Legislature in enacting this act to remove any ambiguity as to the illegality of online gambling in this state. It is also the intent of the Legislature in enacting this act that financial institutions and other intermediaries doing business in the State of California take notice that gambling debts in general, and debts from illegal online gambling in particular, may be unenforceable, and accordingly, these entities are encouraged to take appropriate action to protect their legitimate business interests.

SEC. 2. Section 330d is added to the Penal Code, to read:

330d. (a) Notwithstanding any other provision of law, and in addition to the prohibitions and limitations on gambling contained in this chapter and in Chapter 9 (commencing with Section 319), it is unlawful for any person to operate ~~or bet at or against~~ any prohibited online gambling game, as defined in subdivision ~~(f)~~ (e), for money, checks, credit, or any other representative of value.

(b) Every person who deals, carries on, opens or causes to be opened, or who conducts, operates, or offers for play any prohibited online gambling game played for money, checks, credit, or any other representative of value, to any person that he or she knows or has reason to know is physically located within this state at the time of the transaction, is guilty of a misdemeanor punishable by imprisonment in a county jail not to exceed 90 days, a fine not to exceed one thousand dollars (\$1,000) per transaction, or by both that imprisonment and fine.

(c) Every person who deals, carries on, opens or causes to be opened, or who conducts, operates, or offers for play any prohibited online gambling game played for money, checks, credit, or any other representative of value, from a host server, as defined in subdivision (i), that is physically located within this state at the time of the transaction, is guilty of a misdemeanor punishable by imprisonment in a county jail not to exceed 90 days, a fine not to exceed one thousand dollars (\$1,000) per transaction, or by both that imprisonment and fine.

(d) (1) Every person or entity who aids and abets another person who is physically located in this state to ~~play or bet at~~ *deal, carry on, conduct, operate, offer for play, open or cause to be opened* any prohibited online gambling game in violation of this section is guilty of a misdemeanor punishable by imprisonment in a county jail not to exceed 90 days, a fine not to exceed one

1 thousand dollars (\$1,000) per violation, or by both that fine and
2 imprisonment.

3 (2) This subdivision ~~shall not apply with respect~~ *does not apply*
4 to advertisements that are not specifically directed towards the
5 residents of this state and which contain adequate disclosure of the
6 illegality of these games, nor ~~shall this subdivision apply with~~
7 ~~respect~~ *does this subdivision apply* to Internet service providers,
8 web pages containing hypertext links or third-party
9 advertisements, web search engines, networks, routers, hubs, or
10 other directories, indexes, devices, or equipment that merely
11 enables a patron to obtain access to an online gambling enterprise
12 and which do not consist primarily of advertisements or
13 promotions of that enterprise.

14 (3) The remedies provided herein are the sole remedies
15 available in law for violations of this subdivision.

16 ~~(e) Every person who plays or bets at or against any prohibited~~
17 ~~online gambling game for money, checks, credit, or any other~~
18 ~~representative of value, while that person is physically located~~
19 ~~within this state, is guilty of an infraction punishable by a fine not~~
20 ~~to exceed twenty-five dollars (\$25) per transaction.~~

21 ~~(f)~~

22 (e) A prohibited online gambling game, for purposes of this
23 section means any of the following games and any common
24 variations thereon or facsimiles thereof, any game prohibited by
25 Section 330 of the Penal Code or Section 19 of Article IV of the
26 California Constitution, as well as any banking or percentage
27 game played with dice, cards, or devices, that is conducted,
28 operated, or offered for play over the Internet for money, checks,
29 credit, or any other representative of value:

30 (1) Craps.

31 (2) Roulette.

32 (3) Blackjack or twenty-one.

33 (4) Slot machines.

34 (5) Poker, including stud poker, draw poker, Caribbean stud
35 poker, or Pai gow poker.

36 (6) Baccarat.

37 (7) Bingo, including bingo pulltab games.

38 (8) Sportsbook wagering, including wagering on the outcome,
39 statistics, or any other aspect of a sporting event, including

1 wagering on a horse race, except to the extent authorized by statute
2 or the California Horse Racing Board.

3 (9) Lottery games.

4 ~~(g)~~

5 (f) For purposes of this act, electronic, computer, or other
6 technological aids to class II gaming devices as defined by federal
7 law, and any gaming devices operated or gaming activities
8 conducted pursuant to the terms of a tribal-state class III gaming
9 compact that is in effect, as a matter of federal law, shall not be
10 considered a form of prohibited online gambling provided that any
11 bet or wager placed in connection with these class II and class III
12 gaming devices or activities is made while all parties to the bet or
13 wager are located on Indian lands notwithstanding that ~~such aids~~
14 *those aids*, devices, or activities may utilize or be interconnected
15 via the Internet.

16 ~~(h)~~

17 (g) A host server, for purposes of this section, means the
18 computer or network of computers on which an online gambling
19 game is operated. Host server does not include any computer, hub,
20 or other device, or any independent computer network, that acts as
21 an intermediary in the transfer of Internet Protocol (IP) packets to
22 and from the host server, provided that the intermediary device is
23 not owned or controlled by the person or entity, or a subsidiary
24 thereof, that owns or controls the host server.

25 ~~(i)~~

26 (h) A transaction, for purposes of this section, means each
27 transfer of funds or other valuable consideration for use in, or in
28 connection with, the making of a wager, series of wagers, or parlay
29 wager.

30 ~~(j)~~

31 (i) The provisions of this section are severable. If any provision
32 of this section or its application is held invalid, that invalidity shall
33 not affect other provisions or applications that can be given effect
34 without the invalid provision or application.

35 ~~SEC. 3. Nothing in subdivision (f) of Section 330d of the~~
36 ~~Penal Code shall be construed to affect the authority of the~~

37 *SEC. 3. Subdivision (e) of Section 330d of the Penal Code*
38 *does not affect the authority of the California Horse Racing Board*
39 *to authorize wagering on the outcome of a horse race over the*
40 *Internet.*

1 SEC. 4. No reimbursement is required by this act pursuant to
2 Section 6 of Article XIII B of the California Constitution because
3 the only costs that may be incurred by a local agency or school
4 district will be incurred because this act creates a new crime or
5 infraction, eliminates a crime or infraction, or changes the penalty
6 for a crime or infraction, within the meaning of Section 17556 of
7 the Government Code, or changes the definition of a crime within
8 the meaning of Section 6 of Article XIII B of the California
9 Constitution.

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